

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION  
3 UNITED STATES OF AMERICA, ) Case 1:18-cr-00457  
4 Plaintiff, )  
5 v. ) Alexandria, Virginia  
6 BIJAN RAFIEKIAN, ) April 20, 2022  
7 Defendant. ) 9:04 a.m.  
8 ) Pages 1 - 6

9 TRANSCRIPT OF STATUS CONFERENCE  
10 BEFORE THE HONORABLE ANTHONY J. TRENGA  
11 UNITED STATES DISTRICT COURT JUDGE  
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25 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES:

2 FOR THE UNITED STATES OF AMERICA:

3 AIDAN GRANO-MICKELSEN, ESQUIRE  
4 OFFICE OF THE UNITED STATES ATTORNEY  
2100 Jamieson Avenue  
5 Alexandria, Virginia 22314  
(703) 299-3700

6 FOR DEFENDANT BIJAN RAFIEKIAN:

7 MARK J. MACDOUGALL, ESQUIRE, *PRO HAC VICE*  
8 STACEY H. MITCHELL, ESQUIRE, *PRO HAC VICE*  
JAMES E. TYSSE, ESQUIRE  
AKIN, GUMP, STRAUSS, HAUER & FELD, LLP  
9 Robert S. Strauss Building  
1333 New Hampshire Avenue, N.W.  
10 Washington, D.C. 20036-1564  
(202) 887-4000

11 ROBERT P. TROUT, ESQUIRE  
12 SCHERTLER, ONORATO, MEAD & SEARS  
555 13th Street, N.W., Suite 500 West  
13 Washington, D.C. 20004  
(202) 628-4199

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1 THE CLERK: Criminal Case 1:18-cr-457, *United*  
2 *States v. Bijan Rafiekian*.

3 Counsel, will you please note your  
4 appearances for the record.

5 MR. GRANO-MICKELSEN: Aidan Grano-Mickelsen  
6 for the United States, Your Honor.

7 THE COURT: Good morning.

8 MR. MACDOUGALL: Good morning, Your Honor.  
9 Mark MacDougall, Stacey Mitchell, Robert Trout, and  
10 James Tysse for Defendant Bijan Rafiekian.

11 THE COURT: All right. The Court has  
12 received his confirmation of his waiver of appearance  
13 here today.

14 We're here on the Court's scheduling status  
15 conference. There's been filed a Notice of Appeal with  
16 respect to the Court's new trial order that was entered  
17 on March 25. I understand that there is an objection  
18 both to that and not setting a trial date.

19 I'll give the defense an opportunity to  
20 address those issues. What's Mr. Rafiekian's current  
21 position on this as far as the status of the case?

22 MR. MACDOUGALL: Your Honor, out of respect  
23 for the Court's scheduling order and our hope to move  
24 forward with the trial at the earliest possible date,  
25 our understanding was that the government has not made

1 a final decision with regard to an appeal. We're here  
2 to address any issues the Court raises, including a  
3 possible trial date.

4 THE COURT: All right. What's the  
5 government's position on setting a trial date?

6 MR. GRANO-MICKELSEN: Your Honor, as the  
7 Court knows, a Notice of Appeal divest the district  
8 court of jurisdiction with respect to the new trial.  
9 So we would say that the date of any new trial should  
10 wait until the appeal proceedings conclude either by a  
11 decision on the merits or by a dismissal from the  
12 government of that appeal.

13 THE COURT: All right. Has the government  
14 made a final decision as far as pursuing the appeal, or  
15 is it still --

16 MR. GRANO-MICKELSEN: It has not yet. It's  
17 under review, Your Honor.

18 THE COURT: All right. Typically, a new  
19 trial order is not appealable. It's not a final order.  
20 It's typically viewed as interlocutory to be reviewed  
21 after the trial. The posture of this case is a little  
22 different. The case had been previously appealed. The  
23 court vacated the Court's setting aside the verdict and  
24 also vacated the conditional new trial order but  
25 remanded the case to this Court in order for the Court

1 to explain further to the court of appeals whether it  
2 understood the limits on its discretion in ordering a  
3 new trial and also to give the Court an opportunity to  
4 express any additional reasons for granting the new  
5 trial beyond its analysis of why it thought the  
6 evidence was insufficient.

7           So I think it's in a little different  
8 posture, and it may, in fact, be that the court of  
9 appeals would think it has continuing jurisdiction to  
10 review the new trial order that the Court has issued  
11 given the opportunity it had given the trial court to  
12 further explain its ruling.

13           So I'm not going to set a trial date. The  
14 court of appeals can, I'm sure, rather quickly decide  
15 whether it has jurisdiction or whether it should be  
16 sent back here for a trial before ruling on reviewing  
17 the Court's new trial order. And if it's sent back,  
18 we'll expeditiously set a trial date and move forward  
19 in that fashion.

20           All right. Anything further?

21           MR. GRANO-MICKELSEN: Your Honor, if I could  
22 just supplement the Court's analysis just briefly.

23           THE COURT: Yes.

24           MR. GRANO-MICKELSEN: I would note that the  
25 government is specifically authorized to appeal the

1 grant of a new trial on Rule 33 grounds and the  
2 government's appeal statute, 3731. So the court of  
3 appeals would have jurisdiction over this.

4 THE COURT: All right. Well, they can decide  
5 if they do or don't.

6 All right. Anything further?

7 MR. MACDOUGALL: Nothing further from the  
8 defense, Your Honor.

9 THE COURT: All right. Thank you.  
10 Counsel is excused.

11 MR. GRANO-MICKELSEN: Thank you, Your Honor.

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13 Time: 9:07 a.m.

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22 I certify that the foregoing is a true and  
23 accurate transcription of my stenographic notes.

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/s/  
Rhonda F. Montgomery, CCR, RPR